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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8
9 Robert M. Lane,

10 Plaintiff,

11 v.

12 Lucas E. Buckley, et al.,

13 Defendants.

14 No. CV-15-01119-PHX-ESW

ORDER

15 Pending before the Court are the fully briefed Motion to Transfer, or in the
16 Alternative, Motion to Dismiss (Doc. 7) and Lane Defendants' Motion to Transfer, or in
17 the Alternative, Motion to Dismiss (Doc. 9). Because this Court lacks personal
18 jurisdiction over all Defendants, the Motions to Transfer (Doc. 7 and Doc. 9) will be
19 granted pursuant to 28 U.S.C. § 1631. The Court will transfer the case to the United
20 States District Court for the District of Wyoming.

21 **Procedural History and Factual Background**

22 Plaintiff is a citizen of Nevada (Doc. 1-1 at 5). Plaintiff filed a pro se First
23 Amended Complaint in Maricopa County Superior Court on May 11, 2015, alleging
24 Breach of Fiduciary Duty, Fraud and Misrepresentation, Legal Malpractice, Conspiracy
25 to Commit a Fraudulent Scheme, Rescission and Restitution, Fraudulent Transfers, and
26 Breach of Contract Enforced by Third Party Beneficiary. (Doc. 1-1 at 2-27). No
27 Defendant is a citizen of Arizona. (Doc. 1-1 at 5-7). By timely Notice of Removal filed
28 June 17, 2015 pursuant to 28 U.S.C. § 1446(b), the case was removed to U.S. District

1 Court for the District of Arizona. (Doc. 1). All Defendants have been served. (Doc 1
2 and Doc. 6). All Defendants except Defendant DFWU, LLC have filed a responsive
3 pleading.¹

4 The District Court has original subject matter jurisdiction as Plaintiff seeks
5 damages in excess of \$75,000, and there is diversity of citizenship. *See* 28 U.S.C.A. §
6 1332(a)(1). However, moving Defendants request that the case be transferred to
7 Wyoming because Arizona lacks personal jurisdiction over all appearing Defendants.

8 The case itself arises from a February 25, 2013 settlement reached as part of
9 Plaintiff's Chapter 7 bankruptcy proceeding held in the United States Bankruptcy Court
10 for the District of Wyoming. The bankruptcy trustee identified two trusts and a limited
11 liability corporation wholly owned by one of the trusts as property of Plaintiff's
12 bankruptcy estate. Assets of the trusts were turned over to the bankruptcy trustee
13 pursuant to a settlement agreement reached, which Plaintiff references as the Turn Over
14 Agreement. Plaintiff has filed his First Amended Complaint alleging that the trust assets
15 should not have been turned over to the bankruptcy trustee.

16 Of significance to a determination of the pending motions is the fact that none of
17 the parties are citizens of Arizona. In addition, none of the alleged settlement
18 transactions giving rise to the First Amended Complaint occurred in Arizona. Nor were
19 the Chapter 7 bankruptcy proceedings held in Arizona. In fact, none of the acts or
20 omissions set forth in the First Amended Complaint allegedly giving rise to the Plaintiff's
21 claims occurred in Arizona. The only reason Plaintiff has filed in Arizona appears to be
22 because the two trusts which are not named parties to the action were allegedly domiciled
23 in Arizona.

24 **Discussion**

25 Pursuant to 28 U.S.C. § 1631, the District Court can transfer a civil case initiated

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27 ¹ Defendant DFWU, LLC is alleged to be a sham defendant or fraudulently joined.
28 *See* Notice of Removal (Doc. 1 at 3). Plaintiff filed an Acceptance and Waiver of Service
as manager for Defendant DFWU, LLC (Doc. 1-2 at 7-8), and Plaintiff states in the First
Amended Complaint that Plaintiff is not asserting a claim against Defendant DFWU,
LLC. (Doc. 1-1 at 6-7). DWFU, LLC is a Delaware Limited Liability Corporation. *Id.*

1 in one district to another if three conditions are met: (1) the transferring court lacks
2 jurisdiction; (2) the receiving court could have exercised jurisdiction at the time the
3 action was filed; and (3) the transfer is in the interests of justice. *See Kolek v. Engen*, 869
4 F.2d 1281, 1284 (9th Cir. 1989).

5 The burden of proof for establishing jurisdiction lies with the Plaintiff. *Cubbage*
6 *v. Merchant*, 744 F.2d 665, 667 (9th Cir. 1984), cert denied, 470 U.S. 1005 (1985). The
7 Court finds, assuming as true all the material factual allegations set forth in Plaintiff's
8 First Amended Complaint and foundationally sound facts set forth by affidavit, that
9 Plaintiff has failed to meet his burden of proof regarding personal jurisdiction over the
10 Defendants in Arizona.

11 The Court may exercise jurisdiction over a defendant in Arizona if the defendant
12 is personally present in Arizona or if the defendant has "minimum contacts" with Arizona
13 such that asserting jurisdiction satisfies due process and "does not offend traditional
14 notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310,
15 316-318 (1945). The Court finds as to each appearing Defendant that Plaintiff has failed
16 to prove minimum contacts with Arizona. Nor are any of the Defendants physically
17 present in Arizona. The actions, omissions, and transactions giving rise to the lawsuit
18 allegedly occurred in Wyoming. Plaintiff's claims arise from the Turn Over Agreement,
19 which was entered into in Wyoming as part of a U.S. Bankruptcy Court proceeding and
20 was approved by the Wyoming Bankruptcy Court. The Defendants never purposefully
21 availed themselves of the privilege of conducting activity in Arizona such that they
22 should "reasonably anticipate" being brought into court here. *See Burger King v.*
23 *Rudzewicz*, 471 U.S. 462, 474 (1985) (citing *World-Wide Volkswagen Corp. v. Woodson*,
24 444 U.S. 286, 295 (1980)). Plaintiff's causes of action do not arise out of any of the
25 Defendants' alleged Arizona related activities such that Defendants are subject to specific
26 jurisdiction. *See Doe v. Unocal Corp.*, 248 F.3d 915, 923 (9th Cir. 2001). An exercise of
27 specific jurisdiction by Arizona would not be reasonable. *Id.* Nor are any of the
28 Defendants' activities in Arizona so "substantial, continuous and systemic" that the Court

1 could conclude the Defendants are subject to general jurisdiction on matters unrelated to
2 Defendants' contacts with Arizona. *See Doe v. Unocal*, 248 F.3d at 923 (citing *Perkins v.*
3 *Benquet Consolidated Mining Co.*, 341 U.S. 437-446 (1952)).

4 The Court further finds that the Wyoming District Court could have exercised
5 jurisdiction at the time the case was filed. Defendants Lucas E. Buckley; Dray,
6 Dyekman, Reed & Healey, P.C.; Gregory C. Dyekman; Hathaway and Kunz, P.C.; and
7 Scott Meier, CPA, are all citizens of Wyoming. None of the Defendants share citizenship
8 with the Plaintiff. Defendants Colleen Lane, Matthew Lane, and Patricia Lane are
9 citizens of Connecticut, Illinois, and South Carolina, respectively. Therefore, Wyoming
10 has subject matter jurisdiction based on diversity of citizenship. 28 U.S.C.A. § 1332. In
11 addition, a substantial part of the acts or omissions giving rise to Plaintiff's claims
12 occurred in Wyoming. *Id.*

13 Finally, the Court concludes that transfer, rather than dismissal, is in the interests
14 of justice. The Court notes that the Plaintiff appears pro se. To dismiss the case and
15 require Plaintiff to re-file could prejudice Plaintiff. Dismissal is also time-consuming,
16 expensive, and causes unnecessary delay. Though Plaintiff prefers to proceed in Arizona
17 for the reasons set forth in his briefing, the Court finds that the interests of justice require
18 the case to proceed in Wyoming. *See Goldlawr, Inc. v. Heiman*, 369 U.S. 463, 467
19 (1962); *Cruz-Aguilera v. I.N.S.*, 245 F.3d 1070, 1074 (9th Cir. 2001).

20 **Conclusion**

21 **IT IS ORDERED** granting in part Motion to Transfer, or in the Alternative,
22 Motion to Dismiss (Doc. 7). The Motion to Transfer is granted; the alternative Motion to
23 Dismiss is denied.

24 **IT IS FURTHER ORDERED** granting in part Lane Defendants' Motion to
25 Transfer, or in the Alternative, Motion to Dismiss (Doc. 9). The Motion to Transfer is
26 granted; the alternative Motion to Dismiss is denied.

27 **IT IS ORDERED** transferring this case to the U.S. District Court for the District
28 of Wyoming.

1 Because this Court finds that it has no jurisdiction over the Defendants, the Court
2 takes no action on the following motions pending in the case: Plaintiff's Emergency
3 Motion to Approve Preliminary Injunction to Preserve Plaintiff's Pension and IRA
4 Monies (Doc. 27); Defendants' Motion to Extend Deadline to Respond to Plaintiff's
5 Motion for Preliminary Injunction (Doc. 30); Lane Defendants' Notice of Joinder in
6 Motion to Extend Deadline to Respond to Plaintiff's Motion for Preliminary Injunction
7 (Doc. 33); and Plaintiff's Motion for Default Judgment against Defendants Colleen Lane
8 and Patricia Lane to Approve Preliminary Injunction to Preserve Plaintiff's Pension and
9 IRA Monies (Doc. 32).

10 || Dated this 3rd day of September, 2015.

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Honorable Eileen S. Willett
United States Magistrate Judge